

Article 26.

Liability Insurance or Self-Insurance.

§ 116-219. Authorization to secure insurance or provide self-insurance.

The Board of Governors of the University of North Carolina (hereinafter referred to as "the Board") is authorized through the purchase of contracts of insurance or the creation of self-insurance trusts, or through combination of such insurance and self-insurance, to provide individual health-care practitioners with coverage against claims of personal tort liability based on conduct within the course and scope of health-care functions undertaken by such individuals as employees, agents, or officers of (i) the University of North Carolina, (ii) any constituent institution of the University of North Carolina, (iii) the University of North Carolina Hospitals at Chapel Hill, or (iv) any health-care institution, agency or entity which has an affiliation agreement with the University of North Carolina, with a constituent institution of the University of North Carolina, or with the University of North Carolina Hospitals at Chapel Hill. The types of health-care practitioners to which the provisions of this Article may apply include, but are not limited to, medical doctors, dentists, nurses, residents, interns, medical technologists, nurses' aides, and orderlies. Subject to all requirements and limitations of this Article, the coverage to be provided, through insurance or self-insurance or combination thereof, may include provision for the payment of expenses of litigation, the payment of civil judgments in courts of competent jurisdiction, and the payment of settlement amounts, in actions, suits or claims to which this Article applies. (1975, 2nd Sess., c. 976; 1989, c. 141, s. 6.)

§ 116-220. Establishment and administration of self-insurance trust funds; rules and regulations; defense of actions against covered persons; application of § 143-300.6.

(a) In the event the Board elects to act as self-insurer of a program of liability insurance, it may establish one or more insurance trust accounts to be used only for the purposes authorized by this Article: Provided, however, said program of liability insurance shall not be subject to regulation by the Commissioner of Insurance. The Board is authorized to receive and accept any gift, donation, appropriation or transfer of funds made for the purposes of this section and to deposit such funds in the insurance trust accounts. All expenses incurred in collecting, receiving, and maintaining such funds and in otherwise administering the self-insured program of liability insurance shall be paid from such insurance trust accounts.

(b) Subject to all requirements and limitations of this Article, the Board is authorized to adopt rules and regulations for the establishment and administration of the self-insured program of liability insurance, including, but not limited to, rules and regulations concerning the eligibility for and terms and conditions of participation in the program, the assessment of charges against participants, the management of the insurance trust accounts, and the negotiation, settlement, litigation, and payment of claims.

(c) The Board is authorized to create a Liability Insurance Trust Fund Council composed of not more than 13 members; one member each shall be appointed by the State Attorney General, the State Insurance Commissioner, the Director of the Office of State Budget and Management, and the State Treasurer; the remaining members shall be appointed by the Board. Subject to all requirements and limitations of this Article and to any rules and regulations adopted by the Board under the terms of subsection (b) of this section, the Board may delegate to the Liability Insurance Trust Fund Council responsibility and authority for the administration of the self-insured liability insurance program and of the insurance trust accounts established pursuant to such program.

(d) Defense of all suits or actions against an individual health-care practitioner who is covered by a self-insured program of liability insurance established by the Board under the provisions of this Article may be provided by the Attorney General in accordance with the provisions of G.S. 143-300.3 of Article 31A of Chapter 143; provided, that in the event it should be determined pursuant to G.S. 143-300.4 that defense of such a claim should not be provided by the State, or if it should be determined pursuant to G.S. 143-300.5 and G.S. 147-17 that counsel other than the Attorney General should be employed, or if the individual health-care practitioner is not an employee of the State as defined in G.S. 143-300.2, then private legal counsel may be employed by the Liability Insurance Trust Fund Council and paid for from funds in the insurance trust accounts.

(e) For purposes of the requirements of G.S. 143-300.6, the coverage provided State employees by any self-insured program of liability insurance established by the Board pursuant to the provisions of this Article shall be deemed to be commercial liability insurance coverage within the meaning of G.S. 143-300.6(c).

(f) By rules or regulations adopted by the Board in accordance with G.S. 116-220(b) of this Article, the Board may provide that funds maintained in insurance trust accounts under such a self-insured program of liability insurance may be used to pay any expenses, including damages ordered to be paid, which may be incurred by the University of North Carolina, a constituent institution of the University of North Carolina, or the University of North Carolina Hospitals at Chapel Hill with respect to any tort claim, based on alleged negligent acts in the provision of health-care services, which may be prosecuted under the provisions of Article 31 of Chapter 143 of the General Statutes. (1975, 2nd Sess., c. 976; 1987, c. 263, s. 1; 1989, c. 141, s. 7; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2009-136, s. 4.)

§ 116-220.1. Funding of self-insurance program.

(a) If the Board elects to establish a self-insurance trust fund, the initial contribution to the fund shall be determined by an independent actuary but shall be no less than three hundred thousand dollars (\$300,000). Annual contributions to said fund shall be made in an amount to be determined each year by the Trust Fund Council upon the advice of an independent actuary and shall include amounts necessary to pay all costs of administration of the self-insurance program and claims adjustment including litigation in addition to amounts necessary to pay claims. Contributions shall be no less than one hundred fifty percent (150%) of the amounts actually paid each year on medical malpractice claims until such time as the Trust Fund Council, with the advice of an independent actuary and the approval of the Board of Governors, determines that an annual contribution in a lesser amount will not impair the adequacy of the fund to satisfy existing and potential health care malpractice claims for a period of one year.

(b) Claims certified to be paid from the fund shall be paid in the order of award or settlement. In the event that the fund created hereunder shall at any time have insufficient funds to assure that both existing and future claims will be paid, the Board is hereby authorized to borrow necessary amounts up to thirty million dollars (\$30,000,000) per established self-insurance trust fund account to replenish the fund. The Board shall maintain funds in each self-insurance trust at no less than one hundred thousand dollars (\$100,000) at all times.

(c) Funds borrowed by the Board to replenish the trust fund account may be secured by pledging noncapital assets of the members. Members shall mean those entities, agencies, departments or divisions of the University which directly contribute funds to the self-insurance

trust. In no event shall individual health care providers be deemed members for the purposes of this section.

(d) Obligations issued under the provisions of this Article shall not be deemed to constitute a debt, liability or obligation of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision but shall be payable solely from the revenues or assets of the members. Each obligation issued under this Article shall contain on the face thereof a statement to the effect that the University shall not be obligated to pay the same nor the interest thereon except from the revenues or assets pledged therefor and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such obligation. (1977, c. 523, s. 2; 1987, c. 263, s. 2.)

§ 116-220.2. Termination of fund.

Any fund created hereunder may be terminated by the Board of Governors upon their determination that other satisfactory and adequate arrangements have been made to assure that both existing and future health care malpractice claims or judgments against the participants in the self-insurance program will be paid and satisfied. Upon the termination of any fund pursuant to this section, the full amount remaining in such fund upon termination less any outstanding indebtedness shall promptly be repaid to the University and allocated among the participating entities according to their respective contributions as determined by the Board of Governors. (1977, c. 523, s. 2.)

§ 116-221. Sovereign immunity.

Nothing in this Article shall be deemed to waive the sovereign immunity of the State. (1975, 2nd Sess., c. 976.)

§ 116-222. Confidentiality of records.

Records pertaining to the liability insurance program, including all information, correspondence, investigations, or interviews, concerning or pertaining to claims or potential claims against participants in the self-insurance program or to the program or applications for participation in the program shall not be considered public records under General Statutes Chapter 132 and shall not be subject to discovery under the Rules of Civil Procedure, General Statutes Chapter 1A. (1975, 2nd Sess., c. 976; 1977, c. 523, s. 1.)

§ 116-223. Further action.

The Board of Governors of the University of North Carolina is hereby authorized to take all action necessary to effectuate the purposes and provisions of this Article. (1977, c. 523, s. 2.)

§ 116-224. Appropriation.

The funds described by this Article are appropriated and shall be used only as provided by this Article. (2006-203, s. 54.1.)

§ 116-225. Reserved for future codification purposes.

§ 116-226. Reserved for future codification purposes.

§ 116-227. Reserved for future codification purposes.

§ 116-228. Reserved for future codification purposes.